

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 690 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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BABULAL HANTAJI MALI

Versus

BHARATBHAI AMRRATLAL KOTHARI

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Appearance:

MR CL SONI for Petitioner

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 24/07/1999

ORAL JUDGEMENT

Leave to amend to join State Government as Respondent. Rule. Mr.Dave, Ld.APP appears and waives rule. Heard Mr.Soni Learned Advocate for the revisioner. He has taken this Court through the impugned order passed by the Learned Magistrate, Deesa in Criminal Case No. 2048 of 1997 rejecting the application of the revisioner complainant seeking a direction on IGP, CID Crime Branch of the State of Gujarat for recovery of Muddamal. He has also taken this Court through an earlier order of Learned JMFC rejecting the report of the Investigating Officer

seeking Summary B and urged that the petitioner has lost ornaments and other household goods which are not recovered as can be seen from the panchnama and therefore the Learned Magistrate ought to have granted the application.

2. The facts of the case in brief are that the petitioner is in possession of a property as a tenant. The landlord tried to forcibly snatch possession thereof from the petitioner. The Local Police Authorities abetted in such illegal act and ultimately the petitioner and family members were thrown out of the house. The petitioner therefore preferred a private complaint as well as preferred a Civil Suit and ultimately he came to be reinstated in the premises. The Investigation was handed over by the Magistrate to the Police Inspector as PSI was the Officer who had allegedly abetted the illegal acts of the landlord. The PI after investigation tendered a report seeking Summary B. Learned Magistrate after considering the report and representation made by the other side ultimately rejected the report and taking cognizance directed to issue bailable warrant against the accused persons. This order came to be passed on 9.9.1997. Thereafter on 29.11.1997 the complainant-petitioner tendered the application in question stating that in his house, besides the household goods, there were ornaments which all have been looted away when he was thrown out of the house forcibly, That the Court has rejected the report for Summary B and has ordered to issue bailable warrants against the accused persons but no Muddamal is recovered and the purpose of the complaint would be frustrated if that is not done and therefore IGP CID Crime Branch may be directed to investigate and recover Muddamal. Learned Magistrate after considering arguments ultimately came to a conclusion that the Court having taken cognizance and having rejected the report for Summary B does not deem it proper to refer back the investigation to the Investigation Agency.

3. Mr.Soni urged that the petitioner had not asked for investigation. The purpose was that of recovery of Muddamal which is not considered by the Learned Magistrate.

4. Mr.Dave on the other hand while opposing this revision application has stated that once the Magistrate takes cognizance, there is no question of referring the matter to the Investigating Agency again and therefore the revision application may be rejected.

5. What transpires from record is that the application in question was for a prayer of referring the matter to IGP CID Crime for investigation and recovery of Muddamal. When the Court has already taken cognizance and had directed issuance of bailable warrant the court could not have referred the matter for further investigation to the Police. Particularly when the Police has, after investigation, sought summary B which the Court deemed it proper not to accept. There does not appear any illegality, impropriety or incorrectness in the order in question. Mr.Soni is not able to show any such illegality, impropriety or incorrectness. The Court is therefore not inclined to exercise the revisional jurisdiction. The revision application merits dismissal and the same is therefore dismissed. Rule discharged. In the light of the special facts, it is directed that the Trial Magistrate shall proceed with the matter before him as expeditiously as possible.

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